84-1530

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NO. 84-1530

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

THE STATE OF TEXAS,
Petitioner,

VS.

FERYL JOHN GRANGER,
Respondent.

BRIEF IN OPPOSITION TO PETITIONER'S WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

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FOR THE RESPONDENT

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INTRODUCTION

Petitioner, THE STATE OF TEXAS, has served and filed a Petition for Writ of Certiorari to the Texas Court of Criminal Appeals. This Brief is presented on behalf of the Respondent, FERYL JOHN GRANGER, in Opposition to the Petition for Writ of Certiorari, in accordance with Rule 22 of the Rules of the Supreme Court.

Respondent was originally convicted of Capital Murder. This conviction was based on the testimony of a Mary Lou Anderson, an accomplice. When she testified she testified that she had no expectation of reduction of her own death sentence in return for that testimony. The Respondent was convicted of Capital Murder and in an appeal the Texas Court of Criminal Appeals reversed Respondent's first conviction, holding that the evidence was insufficient to corroborate.

The Respondent was tried again for Murder and Mary Lou Anderson refused to testify. The prosecutor then read into evidence at the second trial the prior testimony of Mary Lou Anderson. The State again read into evidence the fact that Mary Lou Anderson stated there was no promise of any deal or other leniency. The State took the position at all of the trials that there was no agreement, deal, or tacit understanding, and even took that position on the appeals of the cases.

The Respondent was convicted and appealed this case, and this conviction was reversed by the Texas Court of Appeals, as well as the Texas Court of Criminal Appeals.

ARGUMENT AND AUTHORITIES

The Respondent submits that pursuant to Rule 17 of the Rules of the Supreme Court, this is not a proper case for the grant of a Writ of Certiorari. As Rule 17 indicates, review on Writ of Certiorari is:

> "Not a matter of right, but of judicial discretion, will be granted only when there are special important reasons therefore."

That surely there can be no reasonable doubt that the questions presented do not rise to the level of legal importance which will support the grant of a Writ of Certiorari.

The Petitioner is also wrong where he indicates that the Petitioner had not taken the position that no agreement existed. It has been the position of the Petitioner throughout all of the trials and all of the appeals that there was no agreement, understanding, or tacit agreement.

The Petitioner took the position at the trial of the case that there was no understanding or agreement and offered Mary Lou Anderson's testimony into evidence in the entirety. They at no time indicated to the jury that there was no understanding or agreement and contested the

issue throughout the second trial. This left the impression with the jury that it was the State's position that there was no agreement or understanding, and therefore, the State again used the tainted testimony of Mary Lou Anderson successfully and left the jury with the impression there was no understanding.

This brings this case directly in point with Napue v. Illinois, 360 U.S. 264 (1959).

There is no question that the introduction of this evidence contributed to the conviction of this Respondent. There should be no question that error was harmful beyond a reasonable doubt, to the Respondent.

The Respondent disagrees with the Petitioner that the challenged evidence was helpful to the accused. The State took the position then that there was no understanding or agreement in that trial, and not one (1) time did they let the jury know that there was any agreement or understanding. In effect still misdleading the jury as to the truth.

CONCLUSION

Your Respondent respectfully submits that circumstances are totally lacking in this matter such as to justify the grant of a Writ of Certiorari and the Respondent requests that the Petition in this matter be denied completely.

Respectfully submitted,

FOSTER, POPE & ORSAK

By _____

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CERTIFICATE OF SERVICE

I, LOGENE L. FOSTER, Court Appointed Counsel for the Respondent, FERYL JOHN GRANGER, do hereby certify that a true and correct copy of the above and foregoing Brief in Opposition to Petitioner's Writ of Certiorari to the Texas Court of Criminal Appeals was forwarded to the District Attorney's Office of Fort Bend County, Texas, as well as to Mr. CLYDE F. DEWITT, III, Special Prosecutor by Appointment of William A. Meitzen, by Certified Mail, Return Receipt Requested on this the 24th day of April, 1985.

LOGENE L. FOSTER